concerning the course of proceedings in Court, are equally under its control, in effect, by means of its coercive power over the attorney in all matters relating to professional character and conduct. But, in all these admissions, unless a clear case of mistake is made out, entitling the party to relief, he is held to the admission; which the Court will proceed to act upon, not as truth in the abstract, but as a *formula* for the solution of the particular problem before it, namely, the case in judgment, without injury to the general administration of justice.[1]

§ 207. Admissions which have been *acted upon by others* are conclusive against the party making them, in all cases between him and the person whose conduct he has thus influenced.[2] It is of no importance whether they were made in express language to the person himself, or implied from the open and general conduct of the party. For, in the latter case, the implied declaration may be considered as addressed to every one in particular, who may have occasion to act upon it. In such cases the party is estopped, on grounds of public policy and good faith, from repudiating his own representations.[3] This rule is familiarly illustrated by the case of a man cohabiting with a woman, and treating her in the face of the world as his wife, to whom in fact he is not married. Here, though he thereby acquires no rights against others, yet they may against him; and therefore, if she is supplied with goods during such cohabitation, and the reputed husband is

[1] See Gresley on Evid. in Equity, pp. 349–358. The Roman law was administered in the same spirit. "Si is, cum quo Lege Aquilia agitur, confessus est servum occidisse, licet non occiderit, si tamen occisus sit homo, ex confesso tenetur" Dig. lib. 42, tit. 2, l. 4; Id. l. 6. See also Van Leeuwen's Comm. B. V. ch. 21; Everhardi Concil. 155, n. 3. "Confessus pro judicato est" Dig. ub. supr. l. 1.

[2] See Ante, § 27; Commercial Bank of Natchez *v.* King, 3 Rob. Louis. R. 243.

[3] See Ante, § 195, 196; Quick *v.* Staines, 1 B. & P. 203; Graves *v.* Key, 3 B. & Ad 318; Straton *v.* Rastall, 2 T. R. 366; Wyatt *v.* Ld. Hertford, 3 East, 147.

sued for them, he will not be permitted to disprove or deny the marriage.[1] So, if the lands of such woman are taken in execution for the reputed husband's debt, as his own freehold in her right, he is estopped, by the relation *de facto* of husband and wife, from saying that he held them as her servant.[2] So if a party has taken advantage of, or voluntarily acted under the bankrupt or insolvent laws, he shall not be permitted, as against persons parties to the same proceedings, to deny their regularity.[3] So also, where one knowingly permits his name to be used as one of the parties in a trading firm, under such circumstances of publicity as to satisfy a Jury that a stranger knew it, and believed him to be a partner, he is liable to such stranger in all transactions in which the latter engaged, and gave credit upon the faith of his being such partner.[4] On the same principle it is, that, where one has assumed to act in an official or professional character, it is conclusive evidence against him that he possesses that character, even to the rendering him subject to the penalties attached to it.[5] So also a tenant who has paid rent, and acted as such, is not permitted to set up a superior title of a third person against his lessor, in bar of an ejectment brought by him; for he derived the possession from him as his tenant,

[1] Watson *v.* Threlkeld, 2 Esp. 637; Robinson *v.* Nahor, 1 Campb. 245; Munro *v.* De Chamant, 4 Campb. 215; Ante, § 27. But where such representation has not been acted upon, namely, in other transactions of the supposed husband, or wife, they are competent witnesses for each other. Bathews *v.* Galindo, 4 Bing. 610; Wells *v.* Fletcher, 5 C. & P. 12; Tufts *v.* Hayes, 5 New Hamp. R 452.

[2] Divoll *v.* Leadbetter, 4 Pick. 220.

[3] Like *v* Howe, 6 Esp. 20; Clarke *v.* Clarke, Ib. 61; Goldie *v.* Gunston, 4 Campb 381; Watson *v.* Wace, 5 B. & C. 153, explained in Heane *v.* Rogers, 9 B. & C. 587; Mercer *v.* Wise, 3 Esp. 219; Harmer *v.* Davis, 7 Taunt 577; Flower *v.* Herbert, 2 Ves 326.

[4] Per Parke, J. in Dickinson *v.* Valpy, 10 B. & C. 128, 140, 141; Fox *v.* Clifton, 6 Bing. 776, 794, per Tindal, C. J. See also Kell *v.* Nainby, 10 B. & C. 20; Guidon *v.* Robson, 2 Campb. 302.

[5] See Ante, § 195, and cases cited in note.

and shall not be received to repudiate that relation.[1] But this rule does not preclude the tenant, who did not receive the possession from the adverse party, but has only attorned or paid rent to him, from showing that this was done by mistake.[2] This doctrine is also applied to the relation of bailor and bailee, the cases being in principle the same;[3] and also to that of principal and agent.[4] Thus, where goods in the possession of a debtor were attached as his goods, whereas

[1] Doe *v.* Pegge, 1 T. R. 759, note, per Ld. Mansfield; Cook *v.* Loxley, 5 T. R. 4; Hodson *v.* Sharpe, 10 East, 350, 352, 353, per Ld. Ellenborough; Phipps *v.* Sculthorpe, 1 B. & A. 50, 53; Cornish *v.* Searell, 8 B. & C. 471, per Bayley, J.; Doe *v.* Smythe, 4 M. & S. 347; Doe *v.* Austin, 9 Bing. 41; Fleaming *v.* Gooding, 10 Bing. 549; Jackson *v.* Reynolds, 1 Caines, 444; Jackson *v.* Scissam, 3 Johns. 499, 504; Jackson *v.* Dobbin, Ib. 223; Jackson *v.* Smith, 7 Cowen, 717; Jackson *v.* Spear, 7 Wend. 401. See 1 Phil. on Evid. by Cowen & Hill, p. 107, note 192.

[2] Williams *v.* Bartholomew, 1 B. & P. 326; Rogers *v.* Pitcher, 6 Taunt. 202, 208.

[3] Gosling *v.* Birnie, 7 Bing. 339; Phillips *v.* Hall, 8 Wend. 610; Drown *v.* Smith, 3 New Hamp. 299; Eastman *v.* Tuttle, 1 Cowen, 248; McNeil *v.* Philip, 1 McCord, R. 392; Hawes *v.* Watson, 2 B. & C. 540; Stonard *v.* Dunkin, 2 Campb. 344; Chapman *v.* Searle, 3 Pick. 38, 44; Dixon *v.* Hamond, 2 B. & Ald. 310; Jewett *v.* Torrey, 11 Mass. 219; Lyman *v.* Lyman, Ib. 317; Story on Bailments, § 102; Kieran *v.* Sandars, 6 Ad. & El. 515. But where the bailor was but a trustee, and is no longer liable over to the *cestui que trust*, a delivery to the latter is a good defence for the bailee, against the bailor. This principle is familiarly applied to the case of goods attached by the sheriff, and delivered for safe keeping to a person, who delivers them over to the debtor. After the lien of the sheriff is dissolved, he can have no action against his bailee. Whittier *v.* Smith, 11 Mass. 211; Cooper *v.* Mowry, 16 Mass. 8; Jenney *v.* Rodman, Ib. 464. So, if the goods did not belong to the debtor, and the bailee has delivered them to the true owner. Learned *v.* Bryant, 13 Mass. 224; Fisher *v.* Bartlett, 8 Greenl. 122. Ogle *v.* Atkinson, 5 Taunt. 749, which seems to contradict the text, has been overruled, as to this point, by Gosling *v.* Birnie, *supra.* See also Story on Agency, § 217, note.

[4] Story on Agency, § 217, and cases there cited. The agent, however, is not estopped to set up the *jus tertii* in any case, where the title of the principal was acquired by fraud; and the same principle seems to apply to other cases of bailment. Hardman *v.* Willcock, 9 Bing. 382, note.

they were the goods of another person, who received them of the sheriff in bailment for safe custody, as the goods of the debtor, without giving any notice of his own title, the debtor then possessing other goods, which might have been attached; it was held, that the bailee was estopped to set up his own title in bar of an action by the sheriff for the goods.[1] The acceptance of a bill of exchange is also deemed a conclusive admission, against the acceptor, of the genuineness of the signature of the drawer, though not of the indorsers, and of the authority of the agent, where it was drawn by procuration, as well as of the legal capacity of the preceding parties to make the contract. The indorsement, also, of a bill of exchange or promissory note, is a conclusive admission of the genuineness of the preceding signatures, as well as of the authority of the agent, in cases of procuration, and of the capacity of the parties. So, the assignment of a replevin bond, by the sheriff, is an admission of its due execution and validity as a bond.[2] So, where land has been dedicated to public use, and enjoyed as such, and private rights have been acquired with reference to it, the original owner is precluded from revoking it.[3] And these admissions may be pleaded by way of estoppel *en pais*.[4]

§ 208. It makes no *difference*, in the operation of this rule, whether the thing admitted was *true or false;* it being the fact that it has been acted upon, that renders it conclusive.

[1] Dewey *v.* Field, 4 Metc. 381. See also Pitt *v.* Chappelow, 8 M. & W. 616; Sanderson *v.* Collman, 4 Scott, N. R. 638; Heane *v.* Rogers, 9 B. & C. 577; Dezell *v.* Odell, 3 Hill, 215.

[2] Scott *v.* Waithman, 3 Stark. 168; Barnes *v.* Lucas, Ry. & M. 264; Plumer *v.* Briscoe, 12 Jur. 351.

[3] Cincinnati *v.* White, 6 Pet. 439; Hobbs *v.* Lowell, 19 Pick. 405.

[4] Story on Bills of Exchange, § 262, 263; Sanderson *v.* Collman, 4 Scott, N. R. 638; Pitt *v.* Chappelow, 8 M. & W. 616; Taylor *v.* Croker, 4 Esp. 187; Drayton *v.* Dale, 2 B. & C. 293; Haly *v.* Lane, 2 Atk. 181; Bass *v.* Clive, 4 M. & S. 13; Ante, § 195, 196, 197; Weakley *v.* Bell, 9 Watts, 273.

Thus, where two brokers, instructed to effect insurance, wrote in reply that they had got two policies effected, which was false; in an action of trover against them by the assured for the two policies, Lord Mansfield held them estopped to deny the existence of the policies, and said he should consider them as the actual insurers.[1] This principle has also been applied to the case of a sheriff, who falsely returned that he had taken bail.[2]

§ 209. On the other hand, verbal admissions, which have *not been acted upon*, and which the party may controvert, without any breach of good faith, or evasion of public justice, though admissible in evidence, are not held conclusive against him. Of this sort is the admission, that his trade was a nuisance, by one indicted for setting it up in another place;[3] the admission, by the defendant in an action for criminal conversation, that the female in question was the wife of the plaintiff;[4] the omission by an insolvent, in his schedule of debts, of a particular claim, which he afterwards sought to enforce by suit.[5] In these, and the like cases, no wrong is done to the other party, by receiving any legal evidence showing that the admission was erroneous, and leaving the whole evidence, including the admission, to be weighed by the Jury.

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1 Harding *v.* Carter, Park. on Ins. p. 4. See also Salem *v.* Williams, 8 Wend. 483; 9 Wend. 147, S. C.; Chapman *v.* Searle, 3 Pick. 38, 44; Hall *v.* White, 3 C. & P. 136; Den *v.* Oliver, 3 Hawks, R. 479; Doe *v.* Lambly, 2 Esp. 635; 1 B. & A. 650, per Ld. Ellenborough; Price *v.* Harwood, 3 Campb. 108; Stables *v.* Eley, 1 C. & P. 614; Howard *v.* Tucker, 1 B. & Ad. 712. If it is a case of innocent mistake, still, if it has been acted upon by another, it is conclusive in his favor. As, where the supposed maker of a forged note innocently paid it to a *bonâ fide* holder, he shall be estopped to recover back the money. Salem Bank *v.* Gloucester Bank, 17 Mass. 1, 27.

2 Simmons *v.* Bradford, 15 Mass. 82; Eaton *v.* Ogier, 2 Greenl. 46.

3 Rex *v.* Neville, Peake's Cas. 91.

4 Morris *v.* Miller, 4 Burr. 2057, further explained in 2 Wils. 399; 1 Doug. 174; and Bull. N. P. 28.

5 Nichols *v.* Downes, 1 Mood. & R. 13; Hart *v.* Newman, 3 Campb. 13.

§ 210. In some other cases, connected with the administration of public justice, and of government, the admission is held conclusive, on grounds of *public policy*. Thus in an action on the statute against bribery, it was held that a man, who had given money to another for his vote, should not be admitted to say, that such other person had no right to vote.[1] So, one who has officiously intermeddled with the goods of another recently deceased, is, in favor of creditors, estopped to deny that he is executor.[2] Thus, also, where a ship-owner, whose ship had been seized as forfeited for breach of the revenue laws, applied to the secretary of the Treasury for a remission of forfeiture, on the ground that it was incurred by the master ignorantly and without fraud, and upon making oath to the application, in the usual course, the ship was given up; he was not permitted afterwards to gainsay it, and prove the misconduct of the master, in an action by the latter against the owner for his wages on the same voyage, even by showing that the fraud had subsequently come to his knowledge.[3] The mere fact that an admission was made under oath does not seem alone to render it conclusive against the party, but it adds vastly to the weight of the testimony; throwing upon him the burden of showing that it was a case of clear and innocent mistake. Thus, in a prosecution under

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1 Combe *v.* Pitt, 3 Burr. 1586, 1590; Rigg *v.* Curgenven, 2 Wils. 395.

2 Reade's case, 5 Co. 33, 34; Toller's Law of Exrs. 37–41. See also Quick *v.* Staines, 1 B. & P. 293. Where the owners of a stage coach took up more passengers than were allowed by statute, and an injury was laid to have arisen from overloading, the excess beyond the statute number was held by Ld. Ellenborough to be conclusive evidence that the accident arose from that cause. Israel *v.* Clark, 4 Esp. 259.

3 Freeman *v.* Walker, 6 Greenl. 68. But a sworn entry at the custom-house, of certain premises, as being rented by A., B. and C. as partners, for the sale of beer, though conclusive in favor of the crown, is not conclusive evidence of the partnership, in a civil suit, in favor of a stranger. Ellis *v.* Watson, 2 Stark. R. 453. The difference between this case and that in the text may be, that, in the latter, the party gained an advantage to himself, which was not the case in the entry of partnership; it being only incidental to the principal object, namely, the designation of the place where an excisable commodity was sold.

the game laws, proof of the defendant's oath, taken under the income act, that the yearly value of his estate was less than £100, was held not quite conclusive against him, though very strong evidence of the fact.[1] And even the defendant's belief of a fact, sworn to in an answer in Chancery, is admissible at law, as evidence against him of the fact, though not conclusive.[2]

§ 211. Admissions *in deeds* have already been considered, in regard to parties and privies,[3] between whom they are generally conclusive; and when not technically so, they are entitled to great weight, from the solemnity of their nature. But when offered in evidence by a stranger, or, as it seems, even by a party against a stranger, the adverse party is not estopped, but may repel their effect, in the same manner as though they were only parol admissions.[4]

§ 212. Other admissions, though in writing, not having been acted upon by another to his prejudice, nor falling within the reasons before mentioned for estopping the party to gainsay them, are not conclusive against him, but are left at large, to be weighed with other evidence by the Jury. Of this sort are *receipts*, or mere acknowledgments, given for goods or money, whether on separate papers, or indorsed on deeds, or

[1] Rex *v.* Clarke, 8 T. R. 220. It is observable, that the matter sworn to was rather a matter of judgment, than of certainty in fact. But in Thornes *v.* White, 1 Tyrwh. & Grang. 110, the party had sworn positively to matter of fact in his own knowledge; but it was held not conclusive in law against him, though deserving of much weight with the Jury.

[2] Doe *v.* Steel, 3 Campb. 115. Answers in Chancery are always admissible at law, against the party; but do not seem to be held strictly conclusive, merely because they are sworn to. See Bull. N. P. 236, 237; 1 Stark. Evid. 284; Cameron *v.* Lightfoot, 2 W. Bl. 1190; Grant *v.* Jackson, Peake's Cas. 203; Studdy *v.* Saunders, 2 D. & R. 347; De Whelpdale *v.* Milburn, 5 Price, 485.

[3] Ante, § 22, 23, 24, 189, 204.

[4] Bowman *v.* Rostron, 2 Ad. & El. 295, n.; Woodward *v.* Larking, 3 Esp. 286; Mayor of Carlisle *v.* Blamire, 8 East, 487, 492, 493.

on negotiable securities;[1] the *adjustment of a loss*, on a policy of insurance, made without full knowledge of all the circumstances, or under a mistake of fact, or under any other invalidating circumstances;[2] and *accounts rendered*, such as an attorney's[3] bill and the like. So of a bill in Chancery, which is evidence against the plaintiff of the admissions it contains, though very feeble evidence, so far as it may be taken as the suggestion of counsel.[4]

[1] Skaife *v.* Jackson, 3 B. & C. 421; Graves *v.* Key, 3 B. & A. 313; Straton *v.* Rastall, 2 T. R. 366; Fairmaner *v.* Budd, 7 Bing. 574; Lampon *v.* Corke, 5 B. & Ald. 606, 611, per Holroyd, J.; Harden *v.* Gordon, 2 Mason, 541, 561; Fuller *v.* Crittenden, 9 Conn. 401; Ensign *v.* Webster, 1 Johns. Cas. 145; Putnam *v.* Lewis, 8 Johns. 389; Stackpole *v.* Arnold, 11 Mass. 27; Tucker *v.* Maxwell, Ib. 143; Williamson *v.* Scott, 17 Mass. 249. The American cases on this subject are collected in Cowen & Hill's valuable notes to 1 Phil. Evid. p. 108, note 194, and p. 549, note 963.

[2] Reyner *v.* Hall, 7 Taunt. 725; Shepherd *v.* Chewter, 1 Campb. 274, 276, note by the reporter; Adams *v.* Sanders, 1 M. & M. 373; Christian *v.* Coombe, 2 Esp. 489; Bilbie *v.* Lumley, 2 East, 469; Elting *v.* Scott, 2 Johns 157.

[3] Lovebridge *v.* Botham, 1 B. & P. 49.

[4] Bull. N. P. 235; Doe *v.* Sybourn, 7 T. R. 3.